AMENDED IN ASSEMBLY JULY 1, 2010

SENATE BILL No. 1139

Introduced by Senator Correa

February 18, 2010

An act to amend Sections 21337, 21337.1, 21670, 21671, 21672, 21674, 21675, 21676, 21677, 21679, 21680, 21681, 21682, 21683, 21685, and 22814 of, and to add ~~Section 21671.5~~ *Sections 21671.5 and 22819.1* to, the Government Code, relating to state retirement, *and making an appropriation therefor*.

LEGISLATIVE COUNSEL'S DIGEST

SB 1139, as amended, Correa. State retirement: benefit programs.

~~The~~

(1) The Public Employees' Retirement Law (PERL) provides a comprehensive set of rights and benefits for various employees of the state and local agencies. That law also establishes the Public Employees' Retirement System (PERS) and sets forth the provisions for the delivery of benefits, including retirement benefits, *health benefits*, and an optional tax-deferred compensation program, to its members. Under that law, the retirement benefits of a retirement system member are based, in part, on the completed service credit and compensation received by that member.

This bill would make technical and clarifying changes to those provisions of law, including amendments that rename the current "deferred compensation program" as the "tax-preferred retirement savings program."

(2) Existing law provides health benefits to employees and annuitants of specified contracting public agencies. Existing law requires the employer and each employee or annuitant to contribute a portion of

the costs of providing these benefits. These contributions are deposited into the Public Employee's Contingency Reserve Fund, which is a continuously appropriated trust fund.

This bill would authorize a contracting public agency to elect to provide health benefits to a family member of a deceased annuitant who retired from a contracting agency prior to the effective date of the agency's contract to provide health coverage, and who was validly enrolled in the agency's health benefit plan on the day prior to the effective date of the contract, if that family member does not receive an allowance in place of the annuitant. This bill would require the contracting agency to pay the costs of the benefits and premiums and would authorize the employer to require the family member to pay all or a portion of the costs of the health premium. By increasing member contributions into a continuously appropriated fund, this bill would make an appropriation.

Vote: majority. Appropriation: ~~no~~ *yes*. Fiscal committee: ~~no~~ *yes*. State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. Section 21337 of the Government Code is amended to read:

21337. (a) On an annual basis, the board shall transfer funds to separate supplemental state and school accounts, to fund the purchasing power protection allowance of retirees, survivors, and beneficiaries of state or school employers, respectively. The amounts transferred shall be the lesser of the following:

(1) The amount necessary to increase all monthly allowances paid by this system to retirees, survivors, and beneficiaries of state or school employers to 75 percent of the purchasing power of the initial monthly allowances.

(2) ~~1.1~~ *One and one-tenth* percent of the net earnings on state or school member contributions, as determined by Section 20178.

(b) The funds transferred to the two separate supplemental accounts shall be utilized to increase all monthly allowances paid by this system to retirees, survivors, and beneficiaries of state and school employers, up to a maximum of 75 percent of the purchasing power, as determined by the board, of the initial monthly allowances, notwithstanding the benefit provided by Section 21328, that were received by every retired state or school member or survivor or beneficiary of a state or school member or retiree who was eligible to receive any allowance at the end of each fiscal year. Funds remaining in the state or school account after the payment of benefits under this section shall be transferred to the respective state or school employer accounts.

(c) Annual adjustments in the purchasing power protection allowance shall be effective with the monthly allowance regularly payable on the first day of May, provided that in the first year after enactment of the act adding this subdivision, the purchasing power protection allowance adjustment to the monthly allowance payable on the first day of May shall also reflect an adjustment for the period from January 1 through April 30.

SEC. 2. Section 21337.1 of the Government Code is amended to read:

21337.1. (a) All monthly allowances paid by the system to retirees of contracting public agencies, and to survivors and beneficiaries of members and retirees of those agencies, shall annually be increased to 80 percent of the purchasing power of the initial monthly allowance as determined by the board. Adjustments in the purchasing power protection allowance shall be effective with the monthly allowance regularly payable on the first day of May, provided that, in the first year after enactment of the act amending this subdivision, the purchasing power protection allowance adjustment to the monthly allowance payable on the first day of May shall also reflect an adjustment for the period from January 1 through April 30.

(b) Notwithstanding subdivision (a), retirees of contracting public agencies, and survivors and beneficiaries of members and retirees of those agencies, who receive a monthly allowance payable by this system shall also receive, on or after January 1, 2001, a one-time lump-sum payment in an amount equal to the difference, if any, between the purchasing power protection allowance paid between January 1, 2000, and December 31, 2000, and the purchasing power protection allowance that would have been payable if this section had been operative during that period.

(c) The cost of the increase in allowances paid pursuant to subdivisions (a) and (b) shall be paid from the same assets of the employer used in the determination of each employer contribution rate for each membership classification under which service was credited that affects the allowance calculation of the retirees, survivors, or beneficiaries.

SEC. 3. Section 21670 of the Government Code is amended to read:

21670. The board may establish one or more tax-preferred retirement savings programs for California public employees. These programs shall be made available to all employees of a participating employer under procedures established by the board unless participation is subject to the terms of any memorandums of understanding between the employer and the employees.

SEC. 4. Section 21671 of the Government Code is amended to read:

21671. A tax-preferred retirement savings program established pursuant to Section 21670 may grant the maximum tax-preferred retirement savings opportunities available under current federal law, and may provide for employer as well as employee contributions. The program may include, but is not limited to, one or more of the following plans:

(a) A deferred compensation plan described under Section 457 of Title 26 of the United States Code.

(b) A program described under Section 403(b) of Title 26 of the United States Code. Section 770.3 of the Insurance Code shall not apply to the board for the purposes of contracting for those annuities.

(c) Any other form of a tax-preferred *retirement* savings arrangement authorized by the provisions of Title 26 of the United States Code and approved by the board.

SEC. 5. Section 21671.5 is added to the Government Code, to read:

21671.5. The design and administration of a tax-preferred retirement savings program established pursuant to Section 21670 shall conform with the applicable provisions of Title 26 of the United States Code.

SEC. 6. Section 21672 of the Government Code is amended to read:

21672. A tax-preferred retirement savings program may include one or more of the following components:

(a) Investment fund options for participants, as part of the deferred compensation program administered for state employees by the Department of Personnel Administration.

(b) Investment fund options for other participants.

(c) Annuity contracts on behalf of all participants.

(d) Asset management, administrative, or related services.

SEC. 7. Section 21674 of the Government Code is amended to read:

21674. (a) Investment fund options under subdivision (a) of Section 21672 shall be provided through a written interagency agreement between the board and the Department of Personnel Administration.

(b) Except for investments made pursuant to subdivision (a), participating employers shall enter into a written contractual agreement with the board.

(c) Participants shall enter into contractual agreements that are required to effectuate participation in a tax-preferred retirement savings program, including employees participating under a program described in subdivision (a) or (b) of Section 21671, or any other program that provides for the deferral of compensation program or written salary reduction agreements with their employers, for the purpose of making deferrals or for annuity contracts.

SEC. 8. Section 21675 of the Government Code is amended to read:

21675. All development and administration costs of tax-preferred retirement savings programs shall be paid by employers and plan participants.

SEC. 9. Section 21676 of the Government Code is amended to read:

21676. The Public Employees' Deferred Compensation Fund is hereby established. Notwithstanding any other provision of law, the board may:

(a) Establish one or more accounts, trusts, group trusts, or similar vehicles within the fund.

(b) Retain a bank, trust company, or similar entity to serve as repository of the fund, or of any account, trust, group trust, or other similar vehicle within the fund.

The board may also retain a bank or trust company to serve as a custodian for safekeeping, recordkeeping, delivery, securities valuation, investment performance reporting, or other services in connection with investment of the fund or of any account, trust, group trust, or similar vehicle within the fund.

Notwithstanding Section 13340, all moneys in the fund are continuously appropriated, without regard to fiscal years, to the board to carry out the purposes of this chapter.

SEC. 10. Section 21677 of the Government Code is amended to read:

21677. The Public Employees' Deferred Compensation Fund shall consist of the following sources and receipts, ~~and~~ *for which* disbursements shall be accounted for as set forth below:

(a) Fees determined by the board and paid by employers and plan participants for the cost of administering the tax-preferred *retirement* savings programs.

(b) Asset management fees as determined by the board assessed against investment earnings of investment options or other ~~investments~~ *investment* funds provided by the board to either the state or other public employers. Asset management fees shall be disclosed to participants.

(c) (1) Deferrals or contributions to be paid monthly by participating employers or participants for investment by the board pursuant to this ~~article~~ *chapter*. The moneys shall be deposited in the appropriate account, trust, group trust, or similar vehicle within the Public Employees' Deferred Compensation Fund, and invested in accordance with the fund option or fund selected by the participants.

(2) Deferrals or contributions paid by a contracting agency shall be paid through an electronic funds transfer method prescribed by the board. This payment requirement is effective upon declaration by the board.

(3) A contracting agency that is unable, for good cause, to comply with paragraph (2), may apply to the board for a waiver that allows the agency to pay in an alternate manner as prescribed by the board, but not by credit card payment.

(d) Disbursements shall be paid from the appropriate account, trust, group trust, or similar vehicle within the Public Employees' Deferred Compensation Fund, in accordance with the provisions of this chapter, the documents and instruments governing the tax-preferred retirement savings program, and current federal law pertaining to tax-preferred savings programs.

(e) The board shall offer a savings account equivalent program among those deferred compensation accounts made payable to participants.

(f) Net earnings on the Public Employees' Deferred Compensation Fund shall be credited to the appropriate account, trust, group trust, or similar vehicle. Participant accounts shall be individually posted to reflect net asset value for each fund in which the participant invests.

(g) The board has the exclusive control of the administration and investment of the Public Employees' Deferred Compensation Fund.

SEC. 11. Section 21679 of the Government Code is amended to read:

21679. The officers and employees of this system shall discharge their duties with respect to the tax-preferred retirement savings program solely in the interest of the participants in the following manner:

(a) For the exclusive purpose of providing tax-preferred retirement savings to participants and defraying reasonable expenses of administering the program.

(b) In the selection of investment options with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with those matters would use in the conduct of an enterprise of a like character and with like aims.

(c) By diversifying the investment options available to participants so as to minimize the risk of large losses and by using reasonable diligence to accurately inform all employees and participants as to all options.

(d) In accordance with the documents and instruments governing the ~~plan~~ *programs* insofar as those documents and instruments are consistent with this chapter.

SEC. 12. Section 21680 of the Government Code is amended to read:

21680. Except as otherwise provided by law, the officers and employees of this system shall not engage in a transaction with regard to a tax-preferred retirement savings program if they know or should know that the transaction constitutes, directly or indirectly, any of the following:

(a) The sale, exchange, or leasing of any property from the program to a participant for less than adequate consideration, or from a participant to the ~~plan~~ *program* for more than adequate consideration.

(b) The lending of money or other extension of credit from the ~~plan to a participant in the program~~ *program to a participant* without the receipt of adequate security and a reasonable rate of interest, or from a participant to the program with the provision of excessive security or an unreasonably high rate of interest.

(c) The furnishing of goods, services, or facilities from the program to a participant for less than adequate consideration, or from a participant to the program for more than adequate consideration.

(d) The transfer to, or use by or for the benefit of, a participant of any assets of the program for less than adequate consideration.

SEC. 13. Section 21681 of the Government Code is amended to read:

21681. The officers and employees of this system shall not do any of the following:

(a) Deal with the assets of the program in their own interest or for their own account.

(b) In their individual or in any other capacity, act in any transaction involving the program on behalf of a party, or represent a party, whose interests are adverse to the interests of the program or the interests of the participants.

(c) Receive any consideration for their personal account, or any gift, from any party dealing with the program in connection with a transaction involving the assets of the program.

SEC. 14. Section 21682 of the Government Code is amended to read:

21682. This chapter shall not be construed to prohibit officers and employees of this system from participating in a tax-preferred retirement savings program, on the same terms as other state employees or participants.

SEC. 15. Section 21683 of the Government Code is amended to read:

21683. This system may require an investment manager or recordkeeper under contract with, or appointed by, this system be subject to the duties set forth in Section 21679.

SEC. 16. Section 21685 of the Government Code is amended to read:

21685. Notwithstanding any other provision of this part, the following definitions govern the construction of this chapter:

(a) "Participating employer" means any California public agency, including, but not limited to, any office of the county superintendent of schools, school district, community college district, or public agency defined by Section 20056 that has elected to contract for a tax-preferred retirement savings program for any or all of its employees.

(b) "Employer" means any city, county, city and county, district, school district, community college district, county superintendent of schools, and other public authority or body within this state.

(c) "Participant" means any person enrolled in a tax-preferred *retirement* savings program established by this chapter.

SEC. 17. Section 22814 of the Government Code is amended to read:

22814. (a) A judge who retires pursuant to Chapter 11 (commencing with Section 75000) of Title 8, but is not yet receiving a pension, may continue his or her coverage and the coverage of any family members for the duration of the leave of absence, upon his or her application and upon assuming payment of the contributions otherwise required of the employer.

(b) (1) A judge who leaves judicial office pursuant to subdivision (b) of Section 75521 and has not attained 65 years of age may continue his or her coverage and the coverage of any family members upon assuming payment of the contributions otherwise required of the employer. The judge shall also pay an additional 2 percent of the premium amount to cover administrative expenses incurred by the system or the Department of Personnel Administration.

(2) An election to continue coverage under this subdivision shall be made within 60 days of permanent separation. A retired judge who cancels that coverage may not reenroll.

(3) Upon attaining 65 years of age, a retired judge who has continuous and uninterrupted coverage pursuant to this subdivision shall be entitled to the applicable employer contribution.

SEC. 18. Section 22819.1 is added to the Government Code, to read:

22819.1. (a) A family member of a deceased annuitant who retired from a contracting agency prior to the effective date of the agency's contract to provide health coverage under this part, and who was validly enrolled in the agency's health plan on the day prior to the effective date of the contract under this part, but who *does not receive an allowance in place of the annuitant, is deemed to be an annuitant for purposes of Section 22760, pursuant to regulations prescribed by the board.*

(b) A contracting agency shall remit the amounts required under Section 22901 as well as the total amount of the premium required from the employer and enrollees in accordance with regulations of the board. Enrollment of the eligible family members shall be continuous following the death of the annuitant, or the effective date of enrollment, as applicable, so long as the surviving family members meet the eligibility requirements of Section 22775 and any regulations promulgated with respect to that section. Either a failure to timely pay the required premiums and associated costs of the coverage or the cancellation of coverage shall terminate the coverage without the option to reenroll. The contracting agency may elect to require the family members to pay all or any part of the employer premium for enrollment.

(c) This section shall apply to a contracting agency only upon the filing with the board of a resolution of its governing board electing to be subject to this section

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